A Guide to Alberta's Electronic Transactions Act

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GOVERNMENT OF ALBERTA

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ABOUT THIS GUIDE

Electronic commerce is quickly changing the way business and work gets done. Traditionally, we relied on paper records, written signatures, printed forms and contracts. Today, high-speed electronic connections, the Internet and electronic commerce are replacing those paper-based approaches. Laws in Alberta and around the world are being updated to reflect this new style of business and business transactions, including a broad range of financial and other types of electronic transactions.

On April 1, 2003 the *Electronic Transactions Act*, and accompanying Regulations, come into force. Its purpose is to remove barriers to electronic commerce and make sure Alberta's laws keep pace with a changing world. It applies to both the public and private sectors. And it ensures that electronic records and transactions have the same validity and enforceability as traditional paper-based transactions.

Key features of the *Electronic Transactions Act* include the following:

- ✓ Electronic signatures and records have the same legal status as paper-based and written information.
- ✓ Consent by both parties is required before business is conducted electronically.
- ✓ People can continue to use traditional, paper-based approaches in dealing with government, public organizations or in the business sector. But if they choose to use electronic communications, they can be assured that electronic transactions have the same legal status as paper-based approaches.
- ✓ Alberta's electronic commerce laws are consistent with Canadian and international standards. With similar legislation across the country, legal uncertainty around electronic communications is removed.

With this legislation in place, we can look forward to increased efficiency in many aspects of dealing with government, public organizations and the private sector. And Alberta will be well-positioned to compete in the rapidly changing, global economy where electronic communications put new markets and new business opportunities at our fingertips.

This guide provides an overview of the key components of the legislation and helps explain a number of the important provisions. It is designed to help public sector organizations, businesses and individual Albertans understand the parameters of conducting business electronically. For your convenience, the *Electronic Transactions Act* is available at http://www.qp.gov.ab.ca/documents/Acts/E05P5.cfm?frm_isbn=0779705114

This publication is intended to serve as a supplement to the *Electronic Transactions Act*. It is provided as a guideline, not as binding rule and is not to be used as a substitute for legal advice.

INTRODUCTION

The *Electronic Transactions Act* (ETA) applies to a wide range of electronic transactions in both the public and private sectors. Where Alberta laws or common law require written and/or signed records, the ETA ensures that electronic communications can be used and have the same legal status as written communications.

The Act provides validity to contracts formed electronically and for electronic communication of contracts for the carriage of goods. The Act also amends the *Alberta Evidence Act* to allow for admissibility of electronic evidence.

DEFINITIONS

Section 1 Interpretation

The interpretation section describes a number of terms used in the Act including the following:

Electronic is broadly defined to include information created, recorded, transmitted or stored in digital form by electronic, magnetic or optical means. This flexible approach ensures that the Act will apply to new forms of technology as they are developed.

Electronic agent is typically a software program that can be used to automate electronic contracts. For example, stock traders may instruct an electronic agent to buy or sell stocks at specified values.

Electronic signature is electronic information that a person creates or adopts in order to sign a record. It does not create a different legal meaning of "signature" in the electronic world but it allows for electronic signatures to have the same status as written ones. An electronic signature does not need to "look like" a handwritten signature, though it is possible to digitize handwriting so that it is displayed in that way.

An electronic signature will not be "attached" to an electronic document the same way as ink to a paper signature.

Public bodies are defined in the Designation Regulation of the *Electronic Transactions Act*.

The ETA applies to requirements in Alberta laws that specify when written information or signatures are required, or require that an original record must be provided. If the parties involved consent, these types of legal requirements can now be met with electronic information.

APPLICATION OF ACT

Section 2 Preservation of other laws re information or records in electronic form

In some cases, laws are in place to provide for or expressly bar the use of electronic information or records. The ETA does not limit the operation of any other rules of law that already are in place. The ETA also does not override other laws that contain express provisions for the display or delivery of information or records. For example, if a law specifically requires delivery of a record by registered mail, the ETA will not allow electronic delivery as a substitute.

Section 3 Preservation of other laws re confidentiality, privacy and access to information

Privacy of electronic information is an important concern for Albertans. Rules for providing access to information held by public bodies and other similar organizations and for protecting individuals' privacy are set out in Alberta's *Freedom of Information and Protection of Privacy Act*, the *Health Information Act*, and a number of other laws.

The ETA does not limit the operation of those Acts nor does it authorize the destruction of records whose retention and disposition is set out in another law.

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Section 4 Legal requirements to which Act does not apply

There may be some situations where it is not appropriate to use electronic transactions or communications. This section provides the ability to exempt requirements of the ETA in cases where electronic transactions should not be used as a substitute for written records.

Section 5 Biometric Information

Biometric information is derived from someone's personal characteristics. Such characteristics include DNA samples, finger scanning, voice recognition, or retinal (eye) scans.

As much of this technology is in developmental stages, the section makes it clear that the use of biometric information is not allowed unless another Act expressly authorizes its use.

Section 6 Legislative Assembly Act

The ETA does not apply to anything done under the *Legislative Assembly Act*.

Section 7 Exceptions

Some records and transactions require more detailed rules than this legislation provides. For this reason, several exceptions have been made including wills, enduring powers of attorney, and personal directives.

This means that these types of transactions cannot be done electronically under the requirements of the *Electronic Transactions Act*.

In the future, if it is possible and acceptable to handle these transactions in an electronic form, specific legislative requirements will be developed.

Section 8 Consent

Consent means a person voluntary agrees with what is being done or proposed.

Consent can be either express or implied. **Express consent** is given explicitly, either orally, in writing, or electronically. Express consent is very clear and does not require any assumptions on the part of the person or organization seeking consent. **Implied consent** involves situations where consent can reasonably be inferred from things people do or do not do.

The ETA **does not** require people to use electronic records. They can choose to use electronic records and give their consent either by express agreement or by practice. For example, placing an order through a web site may be implied as consent to deal with that vendor electronically. Questions about whether or not consent was given and the effect of withdrawing consent will be judged on a case-by-case basis.

A company can obtain consent once to communicate electronically for a number of transactions. For example, with a click of a button on a web site, a person can consent to communicate electronically for more than one transaction. Consent for electronic transactions such as forms, which may differ from transaction to transaction, may require consent prior to each communication.

Section 9 Crown bound

The rules set out in the ETA apply to the provincial government (the "Crown") and all of its electronic communications. Sections 19 through 24 contain special provisions for communications with public bodies, including the Government of Alberta.

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FUNCTIONAL EQUIVALENCY RULES

Section 10 Legal recognition of information and records in electronic form

Electronic information or records covered by the ETA will have the same legal effect and enforceability as written information or records.

However, the ETA does not guarantee the effect of electronic communications. In some cases, there may be reasons to challenge the validity of a particular electronic record. The purpose of this section is to ensure that the electronic form alone is not a sufficient reason to question the validity of the information.

Section 11 Legal requirement that information or record be in writing

The ETA requires that electronic communication can be accessed and used at a later time.

Accessible means that the information must be understandable as well as available for subsequent references. Just as legislation does not specify how long paper-based records are guaranteed to last, the ETA does not specify a time limit for which the electronic record must be usable.

In the Alberta public sector, management of records is addressed in the *Records Management Regulation* found under the *Government Organization Act*.

Section 12 Legal requirement to provide information or record in writing

The ETA not only requires that information must be accessible for subsequent use; it also requires that the individual or organization that receives the information electronically must be able to retain the information. The ETA does not specify how electronic information can be retained because different organizations may use different means for different purposes. In some cases, the information could be sent by e-mail. In others, it could be made available for printing or downloading, if the intended recipient is given notice that the information can be accessed in this way.

Section 13 Legal requirement to provide information or record in non-electronic form

Sometimes laws require information to be submitted in a specific form or in a certain way.

Under the ETA, electronic records must have the same, or substantially the same form, as the paper requirement because the format of the record can be a vital part of its meaning.

Section 14 Legal requirement re original records

In many cases, original records are required as a way of ensuring the reliability of information on the record. Presumably, it is harder to alter an original record than a copy.

This section enables an electronic record to function as an original if there are sufficient assurances that the information is reliable. The standard for assuring the reliability of the information will vary with the purpose of the record, just as the degree of scrutiny of the reliability of a paper record will vary.

Section 15 Whether information or record is capable of being retained

Several sections of the ETA require that a record must be capable of being retained.

This section is intended to discourage the sender of electronic information from doing anything that would hinder the recipient from

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printing or storing the electronic record once it is received.

Section 16 Legal requirement that record be signed

If a law requires a signature, the ETA allows for that requirement to be met by providing an electronic signature.

Section 17 Legal requirement re retention of records

People may wish to retain records in electronic form, whether the records were created electronically or on paper. Paper records can be made into electronic records by scanning the information to transform it into data or by imaging, which generally preserves a digital picture of the information.

Information about records often is important to understand what the records are for and why they have a certain format or content. The ETA requires that similar information about electronic records should be maintained as for paper-based records.

The standard for retaining electronic records is similar to the standard for original records – basically, the reliability of the information must be maintained and the information must be accessible to those who have a right to see it.

The ETA does not set a time limit for retaining electronic records; similar standards and requirements for paper-based records would also apply to electronic records.

The Act also does not expressly require that the hardware and software used to store and read the information be kept current but the information must continue to be accessible even if the hardware and software changes. The law does not set or limit the technology requirements, any more than it requires a certain kind of paper or ink for traditional methods.

Section 18 Legal requirement re one or more copies

Electronic records are usually very easy to reproduce and copies are difficult to distinguish from originals. Because of this, the ETA provides that one electronic copy of a record is sufficient to satisfy a legal requirement to provide multiple copies of a paper record.

PUBLIC BODIES

Section 19 No implied consent

There are a number of different ways in which information can be provided electronically to public bodies. To respond to the needs of individuals and business organizations, public bodies need to be able to accept information in formats that are commonly used by individuals and organizations.

This section allows public bodies to set the rules for how it receives electronic records. Public bodies must provide express (rather than implied) consent. Their consent to accept electronic records must be communicated to those who need this information. This could be done by posting requirements on a web site or by issuing a directive. It could also be expressed in a particular contract.

The rules are different for private sector organizations. Private sector entities do not require express consent and can enter into contracts setting out requirements for electronic communications.

Section 20 Power to use electronic means

This section gives public bodies the power to use electronic communications within their own organization and also with different clients, customers and organizations, and to convert incoming messages to electronic form.

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If a public body wishes to communicate electronically, consent is needed.

This provision is subject to any law that may specifically prohibit the use of electronic communication. However, the mere use of terms such as 'in writing' or 'signature' in other pieces of legislation should not necessarily prevent the use of electronic communications. Many of these laws date from a time when paper-based information was simply assumed rather than chosen over the use of electronic information.

Section 21 Additional conditions re information or records in electronic form

Information technology standards for provincial government departments, branches, offices, agencies, commissions and related bodies can be set by the Minister responsible for the ETA.

Local public bodies such as school boards, post-secondary institutions, regional health authorities and municipalities can set their own information technology standards, including hardware and software specifications and rules on which types of electronic communications would be used (e.g. diskettes, the Internet, dedicated phone lines, and so on).

They may also make rules covering when and how they acknowledge receipt of information so the person submitting information has evidence that the information was received.

Section 22 Additional conditions re electronic signatures

Electronic signatures submitted to government must conform to information technology requirements and to any rules about how those signatures should be made and how their reliability would be assured.

Based on differing needs, a range of standards may be required for different purposes.

The ETA does not say how to show who signed an electronic record. The person who relies on a signature takes the risk that the signature may be invalid; this is the case for both paper-based signatures and electronic signatures.

Section 23 Delegation

At the request of the Minister responsible for the ETA, the Chief Information Officer (CIO) for the Government of Alberta, will set common information technology standards for all provincial government departments, agencies, boards, commissions, corporations, or other bodies designated as a public body under regulation.

When the CIO sets standards for government departments, one of the objectives is to provide compatibility across different organizations. To achieve this, there may be a range of standards recognized for certain transactions, and organizations would only need to fit within this range.

Many organizations (public or private sector) are following industry standards for information technology. It simply makes good business sense to adopt proven, industry standards that will continue to evolve over time.

Section 24 Electronic payments

To ensure the integrity of public accounts and accountability for public finances, payments to and by public bodies are often subject to detailed legal rules.

Public bodies other than a department, branch or office of the Government of Alberta will be able to establish the type of electronic payment they will accept.

For incoming and outgoing payments from government departments, branches or offices, the Minister of Finance can specify the

electronic form for those payments. The usual rules about authority and record keeping would continue to apply.

FORMS

Section 25 Authority to prescribe electronic form and signature

Most organizations have a number of forms they use as part of their regular business transactions. These forms are traditionally in paper format. The *Electronic Transactions Act* allows forms to be created electronically and allows organizations to set the requirements for electronic signatures.

In most cases, the format for forms is not set in legislation. However, there may be cases where current law has set the format for the use of forms. In these instances, a government regulation will be required in order for an electronic form to be accepted.

Section 26 Communication of information

Some laws specifically set out requirements for communication (formats) of information other than by a form.

In cases where such requirements exist, this section allows for the creation of regulations to specify the format of the communications in an electronic environment.

ELECTRONIC TRANSACTIONS AND ELECTRONIC AGENTS

Section 27 Formation and operation of electronic contracts

The ETA does not change the general law of contracts, but it ensures that electronic communications can convey the intent necessary to form electronic contracts.

In written contracts, detailed legal language and specific signatures are required. With electronic contracts, it is more typical for a person to click an icon on a computer screen to indicate their acceptance. Under the ETA, communicating electronically can mean clicking icons on a computer screen, as a form of an electronic contract.

Section 28 Involvement of electronic agents

The legislation recognizes that contracts may be formed between an electronic agent and a person, or between electronic agents (computer to computer). For example, a company may place an order through a website for office supplies. Most often, an electronic agent would receive and manage the office supply order, as opposed to an actual person receiving the order at his or her personal computer.

Under the new legislation, contracts established through electronic agents are legally valid, provided they meet the requirements set out in the legislation.

Section 29 Errors re transactions with electronic agents

With electronic communications, errors are relatively easy to make. For example, it is easy to hit the wrong key when typing quickly or click a mouse on the wrong spot on a screen and, by doing so, send a command with legal consequences.

This section supplements the general law of contracts and addresses cases when mistakes are made in electronic contracts. It provides protection for individuals who make mistakes in entering into electronic contracts. And it also protects businesses that offer products or services online by providing increased security against people who claim they made a mistake and did not intend to enter into a legal contract.

The section sets out conditions under which an electronic transaction would have no legal effect. That includes cases where the person involved makes a material error, the electronic

agent doesn't give the person an opportunity to prevent or correct the error, or the person promptly notifies the other person of the error.

Often, electronic transactions require an individual to confirm their order before a contract is in place. For example, a message may appear on the screen saying "You have ordered 100 widgets at $10 each. Is this correct?" If the person confirms the order, the electronic transaction would be valid.

Section 30 Time of sending of information or records in electronic form

Electronic communications usually depend on intermediaries such as Internet service providers. Over the Internet, messages may travel through various computers or computer systems on the way to their destination. This makes it difficult to determine when and where messages are sent and received. When contracts are involved, it is important to know this information.

Section 30(1) specifies that an electronic message is sent when it leaves the control of the sender, effectively when the sender cannot recall it from the original system or from some other system acting as a dispatch agent or computing service.

If the sender and the addressee are in the same system, the message is sent when the addressee can retrieve and process the message.

Section 30(2)(b) states that, if the addressee does not designate or use an electronic address for receiving messages (for example, designating a work e-mail address to receive work-related messages), then the message is not presumed to be received until the addressee becomes aware of it. The section does not require that the message be retrieved and processed in order to "be received". This is to prevent people from claiming they didn't receive a message when they have simply refused to open it.

Sections 30(3),(4),(5) deal with where messages are sent to and from. Messages are presumed to be sent from and received either at the principal place of business or at the residence of the sender or receiver if they do not have a place of business.

CONTRACTS FOR THE CARRIAGE OF GOODS

Section 31 Activities related to contracts for the carriage of goods

The ETA applies to a number of different activities involved in transporting and carrying goods. The specific activities involved are listed in Section 31(1).

The legislation provides an electronic equivalent for certain shipping documents such as bills of lading, receipts for delivery of goods, or documents stating the nature or value of goods. The objective is to allow electronic records to be treated in the same way as printed records. The Act applies to anything done in connection with a contract for the carriage of goods.

Because goods are frequently transported not only across Canada but also around the world, it is important for Alberta's laws to be consistent with laws in other provinces and countries.

Section 31(3) ensures that an electronic record can be used instead of a written record to meet legal requirements giving rights and obligations to individuals as part of a contract for carrying goods. If rights are to be given to one particular person, the electronic record must give reliable assurance that the rights or obligations represented by the record are those of that person and no other person.

Section 31(5) guards against the risk that both electronic and paper records could be used at the same time for the same purpose. Where

electronic records are used for a specific activity, a written record can't be used for the same purpose unless the electronic form is terminated and people are notified that the electronic form is no longer to be used. While people using electronic records may have to switch to paper records at some point, this section sets out rules to ensure that everyone will know which version of a record is effective.

REGULATIONS

Section 32 Regulations

The Minister may make regulations designating agencies, boards, commissions, corporations, offices or other bodies as public bodies.
**The Designation Regulation has been developed, identifying the public bodies for the Electronic Transactions Act.*

The Lieutenant Governor in Council may make regulations prescribing legal requirements; prescribing records or classes of records; defining terms that are used but not defined in the ETA; and/or respecting other matters considered necessary to carry out the intent of the Act.

**Some records and transactions require more detailed rules due to the sensitivity of the information being provided. The General Regulation has been developed to identify exceptions to the Act.*

In order to provide further clarity, a definition of "interests in land" has also been included in the regulation.

RELATED AMENDMENTS TO THE ALBERTA EVIDENCE ACT

Section 33 Amends RSA 1980 cA-21

The *Electronic Transactions Act* also contains amendments to the *Alberta Evidence Act* to provide for the legal admissibility of electronic evidence. The ETA does not modify any common law or statutory rule relating to the admissibility of records, except the rules relating to authentication and best evidence.

For more information

This guide provides an overview of the key elements of the *Electronic Transactions Act*.

Electronic copies of the *Electronic Transactions Act* and the User Guide can be found on the Innovation and Science web site at http://www.innovation.gov.ab.ca/min/sec/pub/pub_001_1.cfm

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